

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Part 1 of the)
Commission's Rules, Pertaining)
to the Schedule of Annual)
Regulatory Fees for Mass Media)
Services)

MD Docket No. 96-186

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

To: The Commission

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JOINT REPLY COMMENTS

American Radio Systems Corporation ("ARS") and Paxson Communications Corporation ("PCC" and together with ARS, the "Joint Commenters"), by their attorneys, hereby reply to the comments filed in the above-captioned proceeding to amend the schedule of annual regulatory fees applicable to broadcast radio stations. ARS is the parent company of the licensee of 50 AM and FM radio stations nationwide.^{1/} PCC is the parent company of

^{1/} Specifically, ARS is the parent company of the licensees of Radio Stations WRKO(AM), WEEI(AM), WBMX(FM), and WEGQ(FM), Boston, Massachusetts; WBMD(AM) and WBGR(AM), Baltimore, and WQSR(FM), Catonsville, Maryland; WRCH(FM), New Britain, and WTIC(AM), WTIC-FM and WZMX(FM), Hartford, Connecticut; WYRK(AM), WJYE(FM), WSJZ(FM), Buffalo, and WECK(AM) Cheeectowaga, New York; WBZT(AM) and WIRK-FM, West Palm Beach, and WKGR(FM), Ft. Pierce, Florida; WCMF(AM), WCMF-FM and WRMM-FM, Rochester, New York; WONE(AM), WTUE(FM), WMMX(FM), Dayton, Ohio; KLUC-FM, Las Vegas, KXNO(AM) and KXNT(AM), North Las Vegas, KMXB(FM) and KMZQ-FM, Henderson, and KXTE(FM), Pahrump, Nevada; KMJ(AM), KSKS(FM), KKDJ(FM), KNAX(FM) and KVSR(FM), Fresno, KCTC(AM), and KYMX(FM), Sacramento, KSTE(AM), Rancho Cordova and KSSJ(FM), Shingle Springs, California; KFAB(AM) and KGOR(FM), Omaha, Nebraska; KUPL(AM), KUFO(FM) and KUPL-FM, Portland, KBBT-FM, Banks, and KKJZ(FM), Lake Oswego, Oregon; KSJO(FM), San Jose, and KUFX(FM), Gilroy, California; WQRS(FM), Detroit, Michigan; and WFLN-FM, Philadelphia, Pennsylvania.

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the licensees of 36 AM and FM radio stations, located in Florida, Georgia and Tennessee.^{2/}

Each of the Joint Commenters also has applications pending before the Commission to acquire a number of other radio stations.

I. Introduction.

The Joint Commenters encourage the Commission to adopt the National Association of Broadcasters' ("NAB") proposal to amend the Commission's regulatory fee schedule for radio stations such that annual radio station fees would be based on station class and the population served by each station.^{3/} Unlike the Montana Broadcasters Association ("MBA") proposal, NAB's formula provides a reliable and equitable method of calculating regulatory fees.

II. Current Regulatory Fee Schedule.

Under current rules, the Commission uses station class to determine annual regulatory fees. The Commission assesses one fee for each class of radio station; thus, a Class C FM station serving a heavily concentrated population pays the same annual fee as a Class C FM

^{2/} PCC is the ultimate parent of the licensees of the following AM and FM stations: (1) Florida -- WFTL(AM), Ft. Lauderdale; WINZ(AM) and WIOD(AM), Miami; WLVE(FM) and WZTA(FM), Miami Beach; WHNZ(AM), Pinellas Park; WZTM(AM), Largo; WHPT(FM), Sarasota; WSJT(FM), Lakeland; WQTM(AM), Pine Hills; WWNZ(AM) and WSHE(FM), Orlando; WMGF(FM), Mount Dora; WJRR(FM), Cocoa Beach; WNZS(AM), WZNZ(AM), and WROO(FM), Jacksonville; WPLA(FM), Callahan; WTLK-FM, Ponte Vedra Beach; WFSJ-FM, St. Augustine; WTKX-FM and WYCL(FM), Pensacola; WNLS(AM) and WTNT(FM), Tallahassee; WXSJ(FM), Quincy; WJZT-FM, Midway; WDIZ(AM), WPAP-FM and WFSY(FM), Panama City; WPBH(FM), Parker; and WSHF(FM), Mexico Beach; (2) Georgia -- WSNI(FM), Thomasville, Georgia; and (3) Tennessee -- WPTN(AM), WHUB(AM), WGSQ(FM) and WHUB-FM, Cookeville.

^{3/} See Comments of the National Association of Broadcasters at 5 (Dec. 20, 1996) (hereinafter, "NAB Comments").

station serving a sparsely populated area. Recognizing the economic inequities that result from application of this formula, over the past several years, the Commission has sought to develop an alternative formula that would take into account the size of and population within a station's service area. In 1995, for example, the Commission proposed to assess fees based on station class and Arbitron radio market rankings.^{4/} After conducting a study using this formula, however, the Commission concluded that

Arbitron rankings data is incomplete for fee determination purposes, and reliance upon it does not provide a sufficiently accurate and equitable methodology for determining fees.

Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Report and Order, MD Docket No. 95-3, 10 FCC Rcd 13512 ¶ 54 (1995).

In 1996, as part of its rulemaking considering the fees to be assessed for Fiscal Year (FY) 1996, the Commission again asked broadcasters to suggest alternative methodologies for calculating radio station regulatory fees.^{5/} Only MBA responded, and the Commission deferred consideration of its proposal until FY 1997.^{6/} The Commission's Notice of Inquiry in the instant proceeding asked for comments on MBA's formula and suggestions for alternative methodologies.

^{4/} See *Assessment and Collection of Regulatory Fees for Fiscal Year 1995, Notice of Proposed Rule Making*, MD Docket No. 95-3, 10 FCC Rcd 3710, 3723-24 (1995).

^{5/} *Assessment and Collection of Regulatory Fees for Fiscal Year 1996, Notice of Proposed Rule Making*, MD Docket No. 96-84 ¶ 21 (released Apr. 9, 1996). At that time, the Commission reaffirmed its preference for a fee formula based on population and signal coverage but expressed concerns about the cost of developing the database necessary to implement such a formula. Id.

^{6/} *Assessment and Collection of Regulatory Fees for Fiscal Year 1996, Report and Order*, Docket No. 96-84 ¶ 27 (released July 5, 1996).

III. MBA's Proposal Is Flawed And Fails To Meet Commission Goals.

MBA's proposal wholly fails to satisfy the Commission's goal of establishing a fee formula based on signal contours and population served. Indeed, MBA's proposed formula contains the same flaws as the Arbitron ranking system the Commission considered and rejected in 1995. The Commission concluded then, and it remains true today, that Arbitron market designations and rankings are unreliable and do not necessarily accurately reflect the extent of a radio station's signal coverage or the population served thereby. Moreover, MBA's proposal is based on television market definitions and rankings which further skew the formula's accuracy. Television market definitions are based on television viewing, not radio listenership. They do not correspond to radio market definitions in terms of geographic size or population, nor do they accurately reflect radio station coverage. MBA's formula also does not take into account the fact that radio stations of the same class may serve different-sized population groups within a television market and therefore may have a different revenue base. In short, because it would result in an unreliable and inequitable fee structure, the Commission should not adopt MBA's television market-based formula.

IV. NAB's Proposed Formula Will Provide For A More Reliable And Equitable Fee Schedule.

The Joint Commenters urge the Commission to adopt NAB's proposed fee formula because it would be more reliable, would be simple to use and would provide a more equitable basis for assessing fees. As indicated in its comments, NAB's formula is based on each radio station's signal coverage (1 mV/m for AM and FM), the population located within the signal, and station class. Each of these factors is determined according to objective criteria. Station class and signal coverage are calculated according to engineering data for

each station on file with the FCC, and population figures are taken from the U.S. Census. Thus, NAB's formula avoids the use of arbitrary and often inaccurate radio and television market definitions and rankings. The formula will be simple to use because all of the raw data has been assembled and calculated in a database created by NAB and Dataworld that would be made available to the FCC and to broadcasters, at no cost to the FCC.^{7/} Finally, NAB's proposal constitutes a far more equitable methodology for assessing regulatory fees, ensuring that stations of a particular class serving smaller populations will pay a lower fee than stations of the same class serving larger populations.

V. Conclusion.

The Joint Commenters fully support NAB's efforts to develop an alternative methodology for calculating radio station regulatory fees. NAB's proposal provides for a fair and reliable assessment of regulatory fees. Accordingly, the Joint Commenters

^{7/} In the event it adopts NAB's proposal, and assuming that there may be errors in the proposed fee database, it will be necessary for the Commission to establish a procedure for broadcasters to request corrections to the database.

encourage the Commission to adopt NAB's proposed regulatory fee formula for broadcast radio stations.

Respectfully submitted,

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January 6, 1997

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Joint Reply Comments" was sent on this 6th day of January, 1997, by first-class, United States mail, postage-prepaid, to the following:

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